

1 Church hierarchy but the corporation sole is regulated by Washington law when  
2 interacting with the rest of the world. Professor Conklin's uncontradicted account of  
3 the history of the corporation sole in the Catholic Church in the United States provides  
4 the very reasons why the Church's hierarchy has adopted its use in every State in  
5 which it is available. See County of San Luis Obispo v. Ashurst, 146 Cal.App.3d 380,  
6 383, 194 Cal.Rptr. 5, 6 - 7 (Cal.App. 2d Dist. 1983) (one principal purpose of the  
7 corporation sole is to insure the continuation of ownership of property by officials and  
8 successors and not heirs).

9 Contrary to the Diocese's position that the corporation sole statute ensures the  
10 Parishes' interests in Church property, the Diocese's own cited authority confirms that  
11 the Holy See approved the use of a corporation sole as a device to guarantee that its  
12 bishops maintained control over Church property. See Anson Phelps Stokes, Church  
13 and State in the United States, Vol. III at 409 (1950) (Corporation sole confirmed  
14 bishops' jurisdiction over property, a "corner-stone of Catholic discipline" and solved  
15 problem associated with assertions of lay trusteeship over Church property). The  
16 corporation sole statutes do not pretend to ensure that civil society's interactions with  
17 the Church are dictated by the Church's internal governance system. See Id. at 409  
18 (Religious corporations are regulated to safeguard interests of the State and its  
19 citizens). Thus, the Diocese's characterization of these statutes as "safeguarding"  
20 ecclesiastical laws and the Church's internal structure stands the legislative  
21 accommodation of the Church on its head.

22 **b. The Debtor misinterprets the corporation sole statute to**  
23 **bolster its sophistic trust argument**

24 The Diocese and the Parishes harp on the word "trust" in the statute and the  
25 Articles to argue that the term evidences a conventional trust relationship between the  
26 Debtor, the Parishes and the parishioners.<sup>12</sup> But, the historical context makes clear

27 <sup>12</sup> See, Debtor's Opposition, p. 6; Debtor's Cross-Motion, p. 44; Parish Opposition at Parishes'  
28 Opposition, VI.B.1.

1 that the word “trust” means only that the bishops hold the property in a fiduciary and  
2 not personal capacity. Taking the Debtor’s and Parishes’ argument at face value  
3 would mean that the Washington legislature enacted the corporation sole statute for  
4 them and them only so that they could keep their assets within their hierarchy and not  
5 pay their debts.

6 The Diocese begins its analysis of the statutory trust with a mischaracterization  
7 of RCW 24.12.010. The Diocese contends that the statute, which simply allows a  
8 Catholic bishop to incorporate, addresses the ability to incorporate and the *substance*  
9 of his corporate powers by adopting all of canon law.<sup>13</sup> As the Diocese does not quote  
10 the entirety of the statute, its mischaracterization is not so obvious.<sup>14</sup> RCW 24.12.010  
11 provides, in relevant part

12 Any person, being the bishop...may, in conformity with  
13 the constitution, canons, rules, regulations or discipline  
14 of such church or denomination, become a corporation  
15 sole, *in the manner prescribed in this chapter, as nearly  
as may be....*

16 (emphasis added to show words omitted by Debtor). Without the italicized words, the  
17 Court might accept that the corporation sole statute incorporates all of the Church’s  
18 doctrine, having all the attributes afforded by canon law but none of those imposed by  
19 Washington law which might be contrary to canon law. Upon consideration of the  
20 statute in its entirety, it provides that a religious official can incorporate if the concept  
21 of a religious corporation is authorized by the church’s rules.<sup>15</sup> If church doctrine  
22 does not allow the religious official to incorporate, then the official cannot become a  
23 corporation sole. The obvious purpose of the statute is to address the capacity of the

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24 <sup>13</sup> Cross-Motion, p. 47

25 <sup>14</sup> The Diocese also ignores the fact that RCW 24.12.030, and not RCW 24.12.010, is the section  
26 that gives the corporation its powers.

27 <sup>15</sup> Thus, Catholic bishops could use the corporation sole form of property ownership after 1911  
28 when the Holy See authorized them to employ it. Anson Phelps Stokes, Church and State in the  
United States, Vol. III at 413 (1950). Corporations sole predating 1911 may have relied on the  
authority of the Third Plenary Council (1884). Id.

1 official to become a corporation and not the scope of the official's powers once  
2 incorporated.<sup>16</sup> This procedural aspect of the statute is made more clear by its  
3 provision that the official may become a corporation sole "*in the manner prescribed*  
4 *in this chapter, as nearly as may be....*" See 1995 B.Y.U.L. Rev. 439, 458 ("In  
5 general, the presiding officer of any church or religious society is authorized by statute  
6 to form a corporation sole if it is done in conformance with the rules and canons of the  
7 religious entity....") The phrase "*as nearly as may be*" clearly relates to the manner of  
8 incorporation and any doctrinal limitations on the official's ability to conform to the  
9 incorporation procedure (i.e. the official might be doctrinally prohibited to sign a  
10 sworn affidavit as required by RCW 24.12.030). Thus, the ability to incorporate  
11 would not be prejudiced if the official's religious doctrine did not enable him to  
12 comply with the letter of law regarding the incorporation *procedure*.

13 The Diocese asserts that canon law's trust concepts have become Washington  
14 state law because the statute says that "the bishop . . . may in conformity with the  
15 constitution, canons, rules, regulations or discipline of such church or denomination,  
16 become a corporation sole . . ." Yet this provision only applies to how a corporation  
17 sole is formed and not the rules by which it must abide.

18 The word "trust" does not appear in RCW 24.12.010. This is a significant  
19 omission when considering that the Diocese's entire trust argument hinges on finding  
20 a conventional trust concept to justify its disclaimer of valuable property interests.  
21 The word "trust" first appears in RCW 24.012.020 where the statute refers to "the  
22 trust," even though the preceding statute made no reference to a trust. The only  
23 plausible explanation for the use of the term is that it underscores that the corporation  
24 sole's powers could be utilized only for the benefit of the religion, denomination,  
25 society or church and not for the religious official's personal benefit. County of San  
26 Luis Obispo v. Ashurst, 146 Cal.App.3d 380, 194 Cal.Rptr. 5 (Cal.App. 2d Dist.  
27 1983) (based on statutory language substantially identical to the Washington statute,

28 <sup>16</sup> The incorporated official's powers are addressed at RCW 24.12.020.

1 the Court held that “[t]he powers of the corporation sole to administer the property are  
2 extensive and almost unfettered except for the qualification that the property must be  
3 used for the purposes of the office.”<sup>17</sup>

4 The corporation sole statute is neutral as to any particular religion. Thus, RCW  
5 24.12.020’s reference to “the trust” could not be referring to the alleged Diocese-  
6 parish-parishioner trust as such alleged relationships do not exist in all religions.  
7 Additionally, any special civil protection for the Church’s “trusts” would be an  
8 obvious violation of the Establishment Clause.

9 The Diocese’s misconstruction of the corporation sole statute becomes obvious  
10 in the discussion of RCW 24.12.030 (“...[A]ll property held in such official capacity  
11 by such bishop, overseer or presiding elder, as the case may be, shall *be in trust for* the  
12 use, purpose, benefit and behoof of his religious denomination, society or church.”)  
13 (emphasis added). The plain meaning of the statute is that the incorporated official  
14 can only use the property for religious and not personal purposes. The Diocese’s  
15 interpretation requires a virtual amendment of the statute which replaces the phrase  
16 “religious denomination, society or church” with the words “parish” and  
17 “parishioner”. Until the legislature deigns to make this change, the law will maintain  
18 its religious neutrality.

19 **c. The articles of incorporation do not create an express trust**

20 The Diocese and Parishes contend that its Articles create an express trust.<sup>18</sup> The  
21 Diocese quotes Articles III and V and consistently puts the word “trust” in bold  
22 typeface. But, it neglects to highlight the beneficiary of this trust as identified in the  
23 Articles. *The beneficiary of this trust is not the Parishes or the parishioners.* The  
24 stated beneficiary is “that certain religious denomination or society known as the  
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27 <sup>17</sup> Under California’s corporation sole statute (just as in Washington’s statute), “the trust” is an  
28 undefined term. Cal. Corp. Code § 10002.

<sup>18</sup> Cross-Motion, p.45; Debtor’s Opposition, p.8 et seq.; Parishes’ Opposition, Section VI.B.2.

1 Roman Catholic Church.” (Article III). The express purpose of the trust is to use the  
2 property for the “Roman Catholic Church of the Diocese of Spokane.”(Article V).

3 Curiously, the Diocese’s own articulation of the trust is without any reference to  
4 the parishes of Spokane or, more importantly, any limitation of the trust property to  
5 the “*use, purpose, benefit or behoof*” of those parishes. The payment of damages to  
6 the survivors of this abuse, who once were the children of this Diocese, is an  
7 appropriate *use* of the corporation’s property and is part of fulfilling the Diocese’s  
8 self-professed *purpose* to compensate the survivors. In purely legalistic terms,  
9 reduction of the Diocese’s liability is for the *benefit and behoof* of the Diocese and the  
10 Roman Catholic Church in the Diocese of Spokane. In moral terms, it is a necessity.

11 **d. Self-settled trusts are not immune from the claims of the**  
12 **settlor’s creditors**

13 If the corporation sole statute makes the Catholic Church the beneficiary of an  
14 actual trust, it would be a self-settled trust and void as to creditors. See RCW  
15 19.36.020 (“That all deeds of gift, all conveyances, and all transfers or assignments,  
16 verbal or written, of goods, chattels or things in action, made in trust for the use of the  
17 person making the same, shall be void as against the existing and subsequent creditors  
18 of such person.”). See also Wiswall v. Wallaert (In re Wallaert), 149 B.R. 665, 668  
19 (Bankr. W.D. Wash. 1992) (noting that under RCW 19.36.020 the assets in a self-  
20 settled trust “are not immune from the claims of creditors”); Restatement (Third) of  
21 Trusts § 58(2) (2003) (“A restraint on the voluntary and involuntary alienation of a  
22 beneficial interest retained by the settlor of a trust is invalid.”). Cf. Prater v. Houston,  
23 212 P. 1064, 1065 (Wash. 1923) (assuming, without deciding, that an identically-  
24 worded predecessor statute to RCW 19.36.020 worked to void a conveyance as to a  
25 creditor). See Herrin v. Jordan (In re Jordan), 914 F.2d 197, 200 (9<sup>th</sup> Cir. 1990) (Self-  
26 settled trusts are not excludable from the bankruptcy estate).

1           **4. The “Part Performance” Exception to the Statute of Frauds Should**  
2           **Not Apply Here**

3           Since every deed to the Diocese amounts to an absolute transfer, the Debtor  
4 cannot prove up a trust relationship with parol evidence. Zioncheck v. Nadeau, 196  
5 Wash. 33, 36 (1938) (Express trust in real estate can not be established by parol  
6 evidence).

7           As the Committee detailed in the Motion, the Statute of Frauds invalidates the  
8 alleged express trust between the Diocese, the Parishes and the parishioners. Here, the  
9 doctrine of partial performance does not excuse non-compliance with the Statute of  
10 Frauds.<sup>19</sup> Under the doctrine, the beneficiary is required to take certain acts which  
11 have not been taken here. The Diocese does not clearly articulate who is the supposed  
12 beneficiary of the express trust. Regardless, the elements of the doctrine of partial  
13 performance are not satisfied and the express trust must fail for non-compliance with  
14 the Statute of Frauds.

15           The starting point of any analysis of the partial performance doctrine is the  
16 existence of an agreement to transfer the property into a trust. Berg v. Ting, 125  
17 Wash.2d 544, 556 (1995) (Purpose of partial performance doctrine is to ensure  
18 performance of oral agreement). If there is no agreement, then there is no reason to  
19 examine the other elements of the doctrine. In this case, there is no evidence of an  
20 oral agreement to transfer the property into a trust. Bishop Skylstad submitted a 66  
21 paragraph declaration devoid of any reference to an oral agreement to create a trust.  
22 Likewise, not one parishioner or parish priest references an oral promise to hold the  
23 Disputed Real Property in trust uttered by anyone from the Diocese. In the absence of  
24 an oral promise to create a trust, the partial performance doctrine has no application.

25           The purpose of the partial performance doctrine is to prevent the perpetration of  
26 a fraud. Granquist v. McKean, 29 Wash.2d 440 (1947). There is no fraud alleged

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28 <sup>19</sup> Debtor’s Opposition, p.4; Parishes’ Opposition, VI.B.3. (misnumbered as 1).

1 anywhere in the pleadings. The very worst that can be said is that a few parishioners  
2 will be disappointed if the Diocese is required to pay its debts.

3 Another reason the partial performance doctrine does not apply is that there are  
4 no traditional beneficiaries. As explained earlier, in a corporation sole the trust  
5 concept simply differentiates between the bishop's personal and official capacities. It  
6 does not entail trustors, trustees and beneficiaries. If the Court did apply these  
7 concepts to these facts, the beneficiary of the express trust as identified in the Articles  
8 would be the Roman Catholic Church in the Diocese of Spokane; not its parishes or  
9 the parishioners.

10 Even though the doctrine clearly does not apply, the Diocese, Parishes and  
11 parishioners fail to satisfy the test for the partial performance doctrine. The test  
12 requires that the beneficiary: (1) enter into possession, (2) make improvements,  
13 (3) pay consideration, and (4) change position in reliance on the trust. In evaluating  
14 these elements, the factors must point to the existence of the oral agreement and not be  
15 within the context of some other relationship. Diel v. Beekman, 7 Wash.App. 139,  
16 144 (1972)("[T]he acts relied upon as constituting part performance must  
17 unmistakably point to the existence of the claimed agreement. If they point to some  
18 other relationship, such as that of landlord and tenant, or may be accounted for on  
19 some other hypothesis, they are not sufficient.") The Diocese, Parishes and  
20 parishioners fail the test for the following reasons:

21 (1) The express trust beneficiary must enter into possession of the property:

22 While the Committee does not dispute that members of the Catholic community visit  
23 the Disputed Real Property for worship services and other functions, the pastor is the  
24 person who is actually the representative of the occupant of the property. The pastor  
25 is an employee of the Diocese according to the terms of his employment agreement,  
26 which also designates him as the Bishop's agent.

27 (2) The beneficiary must make improvements to the property: The Committee  
28 does not dispute that parishioners make contributions that may be used for

1 maintenance or improvements of the Disputed Real Property. However, the  
2 Committee does dispute that any expenditure by the parishioners was intended by  
3 them to create a property interest in the Disputed Real Property. In Canovaro v.  
4 Brothers of Order of Hermits of St. Augustine, 326 Pa. 76, 78, 191 A. 140, 142-  
5 43 (1937), the Pennsylvania Supreme Court considered a petition by members of a  
6 parish to impress the Church property with a trust for them because they had  
7 purchased and maintained the property with their contributions, donations, and  
8 collections. The Court declined to do so and made the following characterization of  
9 the parishioners' funding:

10           The impulse or motive of the donors in giving was the  
11           spirit and love of the church generally, to promote the  
12           Catholic faith under its protection, not because of any so-  
13           called independent association or any of the members  
14           who composed it. It was given for the purpose of  
15           advancing the worship of God according to the faith and  
16           discipline of the Roman Catholic Church and for no other  
17           purpose.

18 Id. at 82.

19           Just as in Diel v. Beekman, 7 Wash.App. 139, 144 (1972), the parishioners'  
20 contributions in this case "point to some other relationship . . . or may be accounted  
21 for on some other hypothesis". Accordingly, "they are not sufficient" and the partial  
22 performance doctrine argument fails.

23           (3) The beneficiary pays consideration: As noted above, none of the parties  
24 even suggests that the Parishes or the parishioners were intending to acquire a  
25 property interest in the Disputed Real Property.

26           (4) The beneficiary changes position in reliance on the trust: Nothing in the  
27 parishioners' affidavits suggests that the Catholic community in Spokane expected a  
28 beneficial interest in the Disputed Real Property. They did not contribute money with  
the same expectation as an investor in a public company. If someone moved away  
from the parish, they did not expect a return of their money and their membership in  
the parish was not conditioned upon a capital contribution. See Local No. 2508,

1 Lumber & Sawmill Workers v. Cairns, 197 Wash. 476, 487 (1938) (“[U]pon  
2 dissolution of unincorporated associations the property of the association is distributed  
3 per capita among its members.”). Obviously, the Parishes themselves had no change of  
4 position because they had no alternative but to operate within the Church’s  
5 hierarchical structure.

6 **a. The Uniform Management of Institutional Funds Act does not**  
7 **apply to the facts in this case**

8 The Committee cited In re Crossroad Health Ministry, Inc., 319 B.R. 778  
9 (Bankr. D.D.C. 2005), for that court’s holding that a donor’s restricted gift of property  
10 was, for purposes of resolving the competing claims of creditors and the donor,  
11 unrestricted property of a chapter 7 estate. The Parishes ignore the import of the case  
12 and dismiss its applicability to chapter 11. However, the scope of Section 541 does  
13 not vary according to the chapters of the Bankruptcy Code.

14 The Parishes argue that the Uniform Management of Institutional Funds Act,  
15 RCW Chapter 24.44 (the “Funds Act”) impinges upon the general distribution  
16 priorities applicable in a bankruptcy proceeding.<sup>20</sup> The Funds Act, however, does not  
17 restrict the Diocese’s ability to pay the claims of sex abuse survivors for four reasons.  
18 First, the Disputed Real Property is not an “institutional fund”, which is the subject of  
19 the Funds Act. An “institutional fund” does not include a fund in which a beneficiary  
20 has an interest. RCW 24.44.010. According to the Parishes, they are unincorporated  
21 associations with trust claims against the Disputed Real Property. If this were true,  
22 both the Parishes and each parishioner would have a property interest in the Disputed  
23 Real Property.<sup>21</sup> These interests would disqualify the Disputed Real Property as an  
24 “institutional fund.” Second, none of the parishioners state that they expressed their  
25 restricted intent to any third party when making general donations. Additionally, none  
26 of the deeds reflects any restriction that would qualify them as gift instruments under

27 <sup>20</sup> Parishes’ Opposition, Section VI.e.

28 <sup>21</sup> Each parishioner also would have personal liability for the claims of the sex abuse survivors.

1 the Funds Act. Third, the parishioners do not have standing to enforce the Funds Act.  
2 See Carl J. Herzog Foundation, Inc. v. University of Bridgeport, 243 Conn. 1, 699  
3 A.2d 995 (Conn. 1997) (examining Connecticut version of this uniform law). Finally,  
4 nowhere in the Funds Act is there any indication that the legislature was reversing the  
5 abrogation of the charitable immunity doctrine.

6 Citing the Funds Act has no application to, and is a diversion from, the  
7 principal question posed to this Court: Does the Disputed Real Property belong to the  
8 Debtor? The answer is a resounding, “yes” because the Debtor is a corporation sole  
9 which has ownership and ultimate authority over the Disputed Real Property.

## 10 **5. No Resulting Trust Can Arise on These Facts**

11 Having failed to demonstrate an express or statutory trust, the Parishes and the  
12 Debtor twist the doctrine of resulting trusts in an effort to claim the property of the  
13 bankruptcy estate.<sup>22</sup> In so twisting, they misconstrue undisputed facts and misapply  
14 the law.

### 15 **a. The applicable law**

16 A resulting trust arises when a transfer of legal title occurs under circumstances  
17 indicating the absence of an intention that the person acquiring title should have the  
18 beneficial interest. Thor v. McDearmid, 63 Wash.App. 193, 201, (1991) (citing Diel  
19 v. Beekman, 7 Wash.App. 139 (1972), review denied, 81 Wash.2d 1007 (1972),  
20 overruled on other grounds by Chaplin v. Sanders, 100 Wash.2d 853 (1984)). The  
21 most typical circumstance suggesting such an intention is found “where one person  
22 pays the consideration for a purchase and the title is taken in the name of another,  
23 although they may result from other kinds of transactions.” Farrell v. Mentzer, 102  
24 Wash. 629, 633, (1918).

25 In Engel v. Breske, 37 Wash.App. 526, 528 (1984), review denied, 102  
26 Wash.2d 1025 (1984), the court held there is no presumption of an intent to create a  
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28 <sup>22</sup> Parishes’ Opposition, Section VI.D.; Debtor’s Opposition, pp. 18-20.

1 resulting trust in favor of the beneficiary who provides only a portion of the  
2 consideration for the purchase of property. If there is no presumption, the beneficiary  
3 has the burden of proving the existence of the resulting trust by clear, cogent and  
4 convincing evidence. Id. at 530. See also Omer v. Omer, 11 Wash.App. 386, 391  
5 (1974).

6 **b. Examination of the facts**

7 Here, not one of the declarations put forward by the Parishioners is executed by  
8 a grantor under any of the deeds at issue in the Motion. Moreover, none of the  
9 declarations is made by a parishioner who claims to have given all the funds necessary  
10 to facilitate the Diocese's purchase of any parcel of real property. Finally, none of the  
11 parishioner's declarations say that the parishioner gave money for the purchase of any  
12 of the Disputed Real Property intending to retain a beneficial interest in the money or  
13 the Disputed Real Property. Changing the focus to the intent of the Diocese, nowhere  
14 in the papers submitted by the Debtor is there a recitation of a promise to parishioners  
15 who donated property (whether cash or Disputed Real Property) would be held in trust  
16 for the donor or her parish.

17 It is undisputed that none of the Parishes hold legal title to the Disputed Real  
18 Property. Instead, with very minor variations which do not change the analysis, all of  
19 the Disputed Real Property is titled in the name of the "The Catholic Bishop of  
20 Spokane, a corporation sole."

21 **c. Focus on the Debtor's argument**

22 Because the Debtor wants to keep the Disputed Real Property from the  
23 survivors of sexual abuse perpetrated by clergy, the Diocese contends that a resulting  
24 (or implied) trust governs the beneficial interest in the Disputed Real Property.  
25 Specifically, the Debtor argues:  
26

27 [A] resulting trust may arise if a parishioner donates  
28 property to a specific Parish, and intends to convey the  
interest in the property to the Parish. Due to

1 Washington's corporation sole statute, legal title is  
2 placed in the name of the Diocese, which is under legal  
3 and ecclesiastical obligation to hold the property "in  
4 trust" for the benefit of the Parish. If the purpose of the  
5 grant fails, and the donor gave no indication of a greater  
6 charitable intent, the property will revert back to the  
7 granting parishioner. In no event could the property be  
8 diverted to another use – such as paying diocesan  
9 creditors.<sup>23</sup>

10 Not one case is cited in support of this sweeping generalization.

11 **d. Examination of Church trust cases**

12 The Committee has undertaken an extensive search of the case law nationwide  
13 in an effort to determine what showing a parishioner/donor must make in order to  
14 prevail on a resulting or constructive trust theory against the Church. Apparently,  
15 there are no modern decisions upholding a parishioner's assertions of constructive or  
16 implied trusts against a Catholic diocese or order where title is vested in the name of  
17 the official representative.

18 In Fortier v. Hartford Roman Catholic Diocesan Corp., 2005 WL 758113 \*3  
19 (Conn. Super. 2005) and Collins v. Hartford Roman Catholic Diocesan Corp., 2004  
20 WL 2668255 \*1 (Conn. Super. 2004) (both unpublished decisions), the court denied  
21 parishioners the right to intervene in sex abuse litigation. Specifically, the  
22 parishioners claimed that their contributions could be used solely for worship and  
23 education purposes, but not for payment of claims arising from sex abuse by a priest.  
24 In each case, the court denied the intervention motion because one's interest as a  
25 contributor to a parish or archdiocese was not a "significantly protectible interest" in  
26 the assets of the parish and archdiocese.

27 In Akoury v. Roman Catholic Archbishop of Boston, 2004 WL 2341333 \*3  
28 (Mass. Super. 2004), the court refused to enter a preliminary injunction sought by a  
parish council, finance committee and individual parishioners to prevent the closure of

<sup>23</sup> See Debtor's Opposition, pp. 19-20.

1 a parish even though the parishioners had been self supporting and had a bank account  
2 with over \$200,000, the court rejected all claims of implied trust.

3 In In re Carmel of St. Joseph of Santa Ynez, 237 B.R. 155 (BAP 9<sup>th</sup> Cir.  
4 1999), the Ninth Circuit Bankruptcy Appellate Panel sustained the denial of  
5 constructive and resulting trust claims in an action by a donor of funds who expressly  
6 intended for the purchase of specific real property for a Carmelite monastery. In so  
7 holding, the BAP explained that “[the donor’s] interest, if any, was only in the money.  
8 He did not obtain a beneficial interest in the Property. [The donor] has not presented  
9 any evidence to support the proposition that the Debtor agreed to give [the donor] the  
10 Property if the Debtor failed to build a new monastery on it. [The donor] has no right  
11 to the Property and there is no basis for the imposition of a constructive trust or a  
12 resulting trust.” Id. at 160.

13 In Fortin v. Roman Catholic Bishop of Worcester, 416 Mass. 781, 625 N.E.2d  
14 1352 (1994), the court held that the bishop (as a corporation sole) was both the legal  
15 and beneficial owner of school property. Thus, a resulting trust did not arise from a  
16 parish school corporation's conveyance of all its interest in church property to the  
17 bishop; and no evidence supported the parishioners' contention that there was no  
18 intention to make a gift. The court went on to reject the donor’s constructive trust  
19 argument for lack of evidence of wrongdoing by the bishop.

20 In Save Immaculata/Dunblane, Inc. v. Immaculata Preparatory School, Inc.,  
21 514 A.2d 1152, 1157 (D.C. App. 1986), alumnae joined with parents of several  
22 students and a nonprofit school corporation formed to perpetuate two private schools  
23 and brought an action against the schools and the religious order that owned the  
24 schools’ property seeking to impose a resulting or constructive trust. The religious  
25 order had record title to the properties. The school corporations had reimbursed the  
26 order for initial expenditures in founding the schools, and since then had financed  
27 building improvements. The plaintiffs also claimed a beneficial interest based on their  
28 and others' donations to the schools which, they contended, were made solely with

1 educational purposes in mind. The court, expressly applying “neutral principles of  
2 law,” rejected the asserted trusts, and noted the absence of any authority or evidence  
3 supporting a constructive or resulting trust.

4 In Struempf v. McAuliffe, 661 S.W.2d 559 (Mo.App. 1983), the appellate  
5 court applied neutral principles of law in determining that the trial court erred in  
6 finding that a deed to church property given to the archbishop or his lawful successor  
7 created a trust giving parishioners control over church property. Specifically, the  
8 appellate court found that scrutiny of the documents in purely secular terms provided  
9 no basis for finding any control over the property to be vested in the parishioners and  
10 scrutiny of the canons offered in evidence clearly revealed that property was held  
11 subject to control of the church hierarchy.

12 In Reid v. Barry, 112 So. 846, 93 Fla. 849 (1927), a quiet title action was filed  
13 by the bishop against the heirs of a grantor of real property to a predecessor bishop. In  
14 1888, Robert Reid conveyed by a deed real property to Bishop Moore. The deed  
15 omitted the word “heirs” from the vesting language. As a result, Reid’s heirs claimed  
16 an interest in the property. The court rejected arguments that such a deed to the  
17 bishop as a corporation sole created an express trust or an implied trust, stating:

18 “Absolute control and power of disposition,” which we  
19 think this deed by its terms vested in the grantee and its  
20 successors, “are inconsistent with the idea of a trust.”

21 Id. at 875-879 (citation omitted).

22 In Heiss v. Vosburg 18 N.W. 463, 464 (Wis. 1884), the court held that  
23 congregants who funded the operations of a church were liable for trespassing against  
24 the Bishop when they attempted to raze an old church because the congregants had no  
25 equitable interest in the real property on account of their contributions.

26 In Hennessey v. Walsh 1875 WL 4791 \*13 (N.H. 1875), the court denied a  
27 petition by certain parishioners to replace a bishop. The court held that the  
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1 parishioners did not have a resulting trust interest in church property by virtue of their  
2 contributions to the construction and maintenance of the church.

3 Finally, the Parishes' citation to Matter of Torrez, 63 B.R. 751, 754-55 (9th Cir.  
4 BAP 1986), is not on point. In Torrez, the claimants purchased real property with  
5 their own funds and with the intent to own it, but they put the title in the name of their  
6 adult children in order to have the property qualify for a federal water program. The  
7 children filed for bankruptcy and brought an action to quiet title so they could sell the  
8 property. The Panel held that the imposition of a resulting trust was appropriate since  
9 title was only put in the children's names to avoid certain restrictions in the  
10 government program. In other words, the parties never intended for the children to  
11 actually own the property. Here, no parishioner has claimed to have participated in  
12 such a transaction and the Debtor has not acknowledged participating in such a  
13 transaction. Thus, the outcome in Torrez does not control the result here.

#### 14 **6. The Facts Do Not Justify the Imposition of a Constructive Trust**

15 Not satisfied with claiming the existence of an express trust, a statutory trust  
16 and a resulting trust, the Debtor and the Parishes alternatively claim that a constructive  
17 trust should be imposed.<sup>24</sup>

18 "A constructive trust may arise if consideration for the acquisition of property is  
19 furnished by one party and title is taken in the name of another so that retention of the  
20 property would result in an unjust enrichment. 5 A. Scott & W. Fratcher, Trusts § 462,  
21 at 304 (4th ed. 1989); Scymanski v. Dufault, 80 Wash.2d 77, 89 (1971); Aebig v.  
22 Commercial Bank of Seattle, 36 Wash.App. 477, 479 (1984). The deciding factor is  
23 whether the party who possesses the property has been unjustly enriched. Betchard-  
24 Clayton, Inc. v. King, 41 Wash.App. 887 (1985), review denied, 104 Wash.2d 1027  
25 (1985); Mehelich v. Mehelich, 7 Wash.App. 545 (1972). Yates v. Taylor, 58  
26 Wash.App. 187, 190-91 (1990).

27  
28 <sup>24</sup> Debtor's Opposition, p. 17; Parishes' Opposition, Section VI.D.

1 Although a constructive trust usually is based on findings of fraud (not alleged  
2 in this case), a constructive trust can be premised on a quasi-contractual obligation.  
3 There are two elements necessary for the imposition of a quasi-contractual obligation:  
4 (1) the enrichment of the defendant must be unjust and (2) the plaintiff cannot be a  
5 mere volunteer. Trane Co. v. Randolph Plumbing & Heating,  
6 44 Wash.App. 438 (1986); Yates v. Taylor, 58 Wash.App. 187, 192 (1990).

7 Thus, the Court must examine two essential questions: (1) is the enrichment of  
8 the defendant unjust, and (2) were the parishioners volunteers? With respect to the  
9 first question, the Parishes presumably would contend that the Diocese would be  
10 unjustly enriched by using assets titled in the corporation sole to meet the obligations  
11 of the Diocese. With regard to the second question, the parishioners clearly were  
12 volunteers. The declarations of the parishioners use words like "pledge," "bequeath,"  
13 "donation," "gift" and "contribution."<sup>25</sup> These are the words of one under no  
14 compunction to make a transfer; they evidence of the actions of a volunteer.<sup>26</sup> Since  
15 neither condition is met, no constructive trust can be imposed.

#### 16 **7. The Parishes are not eligible to be beneficiaries of a trust**

17 The Debtor cites Leslie v. MidGate Center, Inc., 72 Wash.2d 977  
18 (1967)("Leslie") for the proposition that an unincorporated association can be the  
19 beneficiary of a trust.<sup>27</sup> Leslie is distinguishable and is not applicable to the facts in  
20 this case for three reasons. First, as in EEOC v. St. Francis and other cases cited by  
21

22 <sup>25</sup> According to Bishop Skylstad, "[t]he acquisition of church property comes about almost  
23 exclusively through donations, gifts and bequests of the Christian faithful." See Skylstad Decl., ¶59.

24 <sup>26</sup> Indeed, in a 1912 letter from the Bishop of Seattle to the priest who founded St Mary's –  
25 Spokane Valley parish, the Bishop wrote: "If I did not inform you of the necessity and custom of  
26 only receiving absolute and unconditional deeds to all church property I overlooked this important  
27 instruction. I would now advise you to impress upon the Catholics of Vera the necessity of  
28 obtaining without delay a quitclaim deed to the corporation of the diocese that we may have title that  
will warrant us to proceed without further delay." See Declaration of Rev. Msgnr. John Steiner --  
Exh. B, pages 3 and 4. (Docket No. 199) Clearly, the Church was only interested in gifts from  
volunteers.

<sup>27</sup> Debtor's Opposition, p. 25; Parishes' Opposition, Section VI.A.1.

1 the Committee, a parish within a corporation sole structure is merely an  
2 unincorporated division of the corporation sole. On this basis alone, the Debtor's  
3 argument fails. Second, the Debtor's own Articles identify the beneficiary of the  
4 alleged trust as the "Roman Catholic Church of the Diocese of Spokane". See  
5 Affidavit of William S. Skylstad, Exh. B, Article IV. To the extent traditional trust  
6 principles even apply, the beneficiary of the trust clearly is not the Parishes. Third,  
7 the ruling in Leslie should not be extended to justify the Parishes' eligibility as a trust  
8 beneficiary. Leslie stands for the narrow proposition that:

9 [T]he unincorporated association is capable of being a  
10 beneficiary of a private trust, either because it is  
11 considered a de facto legal entity, or on the theory that  
12 the gift is to the association until incorporation and then  
13 to a corporation to be formed.

14 Id. at 982 (citing Bogert, The Law of Trusts and Trustees, § 167 (2d ed. 1965)).

15 The present dispute does not involve a private trust, the Parishes' are not  
16 considered de facto legal entities and there is no indication that the Parishes' alleged  
17 beneficial interests would be transferred to another corporation. Leslie was a ruling  
18 based in equity which justified an unincorporated association's ability to be a  
19 temporary beneficiary of a trust only because the parties so intended by agreement and  
20 because the subject property was to be transferred to a corporation to be formed.  
21 Fundamentally, Leslie has no application to the facts in this case.

## 22 **8. Judicial Estoppel Applies Here**

23 The Diocese is estopped from contending that it holds the Disputed Real  
24 Property in trust for the parishioners in the Diocese.<sup>28</sup> The parties agree that the  
25 purpose of judicial estoppel is to maintain the integrity of the judicial system and that  
26 the application of the doctrine requires consideration of a non-exclusive non-  
27 mandatory list of factors. New Hampshire v. Maine, 532 U.S. 742, 751 (2001). The  
28 parties disagree, however, on whether the circumstances of this case and the Diocese's

<sup>28</sup> Debtor's Opposition, p. 27; Parishes' Opposition, Section VI.A.4.

1 litigation position in Munns v. Martin, 131 Wash. 2d 192 (1997) (en banc) (“Munns”)  
2 and Miller v. Catholic Bishop of Spokane, 2004 WL 2074328 (Wash. App. 2004)  
3 (“Miller”) warrant application of judicial estoppel to prevent the Diocese from  
4 asserting that it holds the Disputed Real Property in trust for parishioners.

5 The Diocese contends that Munns does not implicate judicial estoppel because  
6 its interests were not adverse to the parish while ignoring whether its litigation  
7 position was adverse to its parishioners. In fact, the Diocese’s brief to the Washington  
8 Supreme Court makes that adversity clear. In that brief, the Diocese defines the term  
9 “Bishop of Spokane” to include the Catholic Bishop of Spokane, the pastor, the parish  
10 council and the parish building committee. See Brief of Respondent Catholic Bishop  
11 of Spokane at 1, attached to the Supp. Stang. Aff. as Exh. 3. According to the  
12 opinion, the Diocese was “acting through the building committee”. This made the  
13 parish building committee the Diocese’s agent. In addressing which party had the  
14 burden to demonstrate entitlement to relief, the Diocese argued that the parishioners  
15 participating in the Munns Group had no interest in the property.<sup>29</sup> Brief of  
16 Respondent Catholic Bishop of Spokane at 3 (“The Bishop of Spokane, not the Munns  
17 Group, owns the St. Patrick’s school building in question. The Munns Group have no  
18 proprietary interest and are not in any way owners of the building in question.”). In  
19 addition, the definition of “Bishop of Spokane” notably left out the parish itself but  
20 included only the pastor, an agent of the Diocese and committees of parishioners who,  
21 like the Munns Group, had no interest in the property.

22 In Miller, the Diocese’s interest in the property was a critical issue.<sup>30</sup> The  
23 existence of a duty of care and the standard of care to the injured employee turned on  
24 whether the Diocese was a landlord or a licensor. While the Court analyzed the

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26 <sup>29</sup> The Diocese’s brief defines seven people (all parishioners save one) as the “Munns Group”.  
Supp. Stang Aff., Exh. 3, p.1.

27 <sup>30</sup> The Committee cited to Miller v. Catholic Bishop of Spokane, 2004 WL 2074328 (Wash.App.  
28 2004) to illustrate the Diocese’s inconsistent posturing on who has interests in the Disputed Real  
Property, not as legal precedent.

1 Diocese's liability from both perspectives, the Diocese advocated and the Court held  
2 that it was a licensor. As a licensor, the Diocese was the possessor of the property.  
3 As such, the parish could not satisfy the first element in the partial performance  
4 exception to the Statute of Frauds, namely that the beneficiary is in possession of the  
5 trust res. The relationship between the parish in Miller and the Diocese is no different  
6 than the relationship between the parishes in this case and the Diocese.

7 Both cases establish the Diocese's property ownership in contexts that should  
8 judicially estop the Diocese. First, the Diocese contended in both cases that it was the  
9 owner of the properties. This inconsistency is especially apparent because the  
10 Parishes now claim to be both owners and possessors of the Disputed Real Property.  
11 Second, the opinions clearly establish that the courts determined the property issue  
12 and nothing in the Diocese's or Parishes' Oppositions suggests that the courts erred.

13 Judicial estoppel is rooted in equity and fairness. Such inconsistencies must be  
14 brought to the court's attention. These inconsistencies are deliberate and dissembling.  
15 Accordingly, the Parishes and Diocese should be judicially estopped from arguing that  
16 they, or the parishioners, have an ownership interest in the Disputed Real Property.

### 17 **9. The Motion Does Not Create an Intrachurch Dispute**

18 In the Diocese's attempt to scare the Court away from applying civil law to the  
19 rights of creditors, the Diocese has claimed that "the essence of the [Committee's]  
20 Complaint pits the Diocese against the parishes."<sup>31</sup> The Diocese's contention ignores  
21 the reason for this case.

22 This has never been an intrachurch dispute. It has always been a dispute  
23 between the Diocese's creditors, on the one hand, and the Diocese and its divisions,  
24 on the other hand. The Diocese filed bankruptcy to avoid the collection actions of  
25 survivors who inevitably would have obtained judgments against it. If the Diocese  
26 had not filed bankruptcy, one of two things would have occurred: (1) the Diocese  
27

28 <sup>31</sup> Debtor's Opposition, p. 40.

1 would have willingly sold off so-called "parish property" to pay creditors as have  
2 other bishops around the country, or (2) the judgment creditor/survivors would have  
3 levied on the Disputed Real Property. In the first instance, there would have been no  
4 dispute. In the second, the dispute regarding ownership of the real property would  
5 have arisen in the context of a judgment enforcement proceeding. Under Washington  
6 law, a third party claiming an interest or right in levied property has statutory and  
7 common law rights to assert its interest. See RCW 6.19.010 et seq. Indeed, a third  
8 party claimant can post a bond and immediately recover the levied property or file a  
9 motion, without a bond, to recover the levied property after hearing. The responding  
10 parties to the motion are the judgment creditor and the sheriff, and the third-party  
11 claimant is entitled to a trial on its claim.<sup>32</sup> Under the common law remedies, the third  
12 party claimant can file a quiet title action for the real property. Finley v. Finley, 43  
13 Wash.2d 755 (1953). Under any of these remedies, the dispute would be between the  
14 judgment creditor/survivor and any of the entities now claiming an interest in the  
15 Disputed Real Property.

16 **10. A Parish's Ineligibility to be an Involuntary Debtor Does Not**  
17 **Preclude Substantive Consolidation**

18 The Parishes incorrectly contend that the Court cannot substantively consolidate  
19 them with the Diocese because they cannot be involuntary debtors (i.e., they are not  
20 moneyed corporations).<sup>33</sup> The Parishes obviously misunderstand the basis for  
21 substantive consolidation which is conceptually different from an involuntary  
22 bankruptcy. In re Bonham, 229 F.3d 750, 765 (9th Cir. 2000) (substantive  
23 consolidation is based on equitable goals). In Matter of Munford, Inc., 115 B.R. 390,  
24 397-98 (Bankr. N.D. Ga. 1990), cited favorably in In re Bonham, supra, the Court  
25 stated that substantive consolidation of a nondebtor's assets with those of a debtor is  
26 substantially different from and did not circumvent an involuntary petition.

27 <sup>32</sup> In this case, the Parishes would not have the right to sue.

28 <sup>33</sup> Parishes' Opposition, Section VI.F.1.